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EMPLOYEE INVENTIONS AND PROPRIETARY RIGHTS ASSIGNMENT AGREEMENT

Dan Melchione

This Agreement is intended to formalize in writing certain understandings and procedures, which have been in effect since the time I was initially employed by myCIO.com, Inc. (the "Company"). In return for my new or continued employment by the Company, I acknowledge and agree that

1. No Conflict. I will perform for the Company such duties as may be designated by the Company from time to time. During my period of employment by the Company, I will devote my best efforts to the interests of the Company and will not engage in other employment or in any activities determined by the Company to be detrimental to the best interests of the Company without the prior written consent of the Company.

2. Period of Employment. As used herein, the period of my employment also includes any time in which I may be retained by the Company as a consultant.

3. Prior Work. All previous work done by me for the Company relating in any way to the conception, design, development or support of products for the Company is the property of the Company.

4. Proprietary Information. My employment creates a relationship of confidence and trust between the Company and me with respect to any information.

(a) Applicable to the business of the Company, or

(b) Applicable to the business of any client or customer of the Company, which may be made known to me by the company or by any client or customer of the Company, or learned by me in such context during the period of my employment.

All of such information has commercial value in the business in which Company is engaged and is hereinafter called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, maskworks, equipment, algorithms, software programs, software source documents, and formulae related to the past, current, future and proposed products and services of Company, and includes, without limitation, its respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information.

5. Nondisclosure of Proprietary Information. All Proprietary Information is the sole property of the Company, its assigns, and its customers, and the Company, its assigns and its customers shall be the sole owner of all patents, copyrights, maskworks, trade secrets and other rights in connection therewith. I hereby assign to the Company

any rights I may have or acquire in such Proprietary Information. At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything directly relating to it without the written consent of the Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which is generally known in the trade or industry not as a result of a breach of this Agreement and my own skill, knowledge, know-how and experience to whatever extent and in whatever way I wish

6 **Return of Materials.** Upon termination of my employment or at the request of the Company before termination, I will deliver to the Company all written and tangible material in my possession incorporating the Proprietary Information or otherwise relating to the Company's business

7 **Inventions** As used in this Agreement, the term "Inventions" means any and all new or useful art, discovery, improvement, technical development, or invention, whether or not patentable, and all related know-how, designs, maskworks, trademarks, formulae, processes, manufacturing techniques, trade secrets, ideas, artwork, software and other copyrightable and patentable works.

8 **Disclosure of Prior Inventions** I have identified on Exhibit A ("Prior Inventions") attached hereto all Inventions relating in any way to the Company's business or demonstrably anticipated research and development which were made by me prior to my employment with the Company ("Prior Inventions"), and I represent that such list is complete. I represent that I have no rights in any such Inventions other than those Prior Inventions specified in Exhibit A ("Prior Inventions") If there is no such list on Exhibit A ("Prior Inventions"), I represent that I have made no such Prior Inventions at the time of signing this Agreement

9 **Ownership of Company Inventions; License of Prior Inventions** I hereby agree promptly to disclose and describe to the Company, and I hereby assign and agree to assign to the Company or its designee, my entire right, title, and interest in and to all Inventions and any associated intellectual property rights which I may solely or jointly conceive, develop or reduce to practice during the period of my employment with the Company (a) which relate at the time of conception or reduction to practice of the invention to the Company's business or actual or demonstrably anticipated research or development, or (b) which were developed on any amount of the Company's time or with the use of any of the Company's equipment, supplies, facilities or trade secret information, or (c) which resulted from any work I performed for the Company ("Company Inventions") I do hereby grant the Company or its designees a royalty free, irrevocable, worldwide license (with rights to sublicense through multiple tiers of distribution) to practice all applicable patent, copyright and other intellectual property rights relating to any Prior Inventions which I incorporate, or permit to be incorporated, in any Company Inventions Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, such Prior Inventions in any Company Inventions without Company's prior written consent

10 **Cooperation in Perfecting Rights to Inventions**

(a) I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at its expense, but without additional consideration in excess of my salary or wages, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Inventions hereby assigned to the Company. Such acts may include, but are not limited to, execution of documents and assistance or

cooperation in the registration and enforcement of applicable patents, copyrights, maskworks or other legal proceedings if the Company requires my assistance after termination of my employment, I will be compensated for time actually spent in providing such assistance at an hourly rate equivalent to my salary or wages during the last period of my employment with the Company

(b) In the event that the Company is unable for any reason to secure my signature to any document required to apply for or execute any patent, copyright, mask work or other applications with respect to any inventions (including improvements, renewals, extensions, continuations, divisions or continuations in part thereof), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact to act for and on my behalf and instead of me, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights, maskworks or other rights thereon with the same legal force and effect as if executed by me

11 **No Violation of Rights of Third Parties** My performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me prior to my employment with the Company, and I will not disclose to the Company, or induce the Company to use, any confidential or proprietary information or material belonging to any previous employer or others. I am not a party to any other agreement which will interfere with my full compliance with this Agreement. I agree not to enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement

12 **Survival** This Agreement (a) shall survive my employment by the Company, (b) does not in any way restrict my right or the right of the Company to terminate my employment at any time, for any reason or for no reason, (c) inures to the benefit of successors and assigns of the Company, and (d) is binding upon my heirs and legal representatives

13 **Nonassignable Inventions.** This Agreement does not apply to an invention which qualifies fully as a nonassignable invention under the provisions of Section 2870 of the California Labor Code. I have reviewed the notification in Exhibit B ("Limited Exclusion Notification") and agree that my signature acknowledges receipt of the notification

14 **No Solicitation.** During the term of my employment with the Company and for a period of one (1) year thereafter, I will not solicit, encourage, or cause others to solicit or encourage any employees of the Company to terminate their employment with the Company. [In the case of personnel at the Director, Vice President and President this paragraph is modified by the "Addendum to Employee Inventions Agreement" attached hereto as Exhibit C and incorporated herein by reference.]

15 **Injunctive Relief.** A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to the Company for which there will be no adequate remedy at law, and the Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate)

16 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgement of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.

17 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents.

18 Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

19 Waiver. The waiver by the Company of a breach of any provision of this Agreement by me shall not operate or be construed as a waiver of any other or subsequent breach by me.

20 Termination of Employment

(a) If my employment with the Company is terminated for any reason, I shall promptly and without request inform the Company of and deliver to the Company all documents and data pertaining to my employment and the Proprietary Information and Inventions, whether prepared by me or otherwise coming into my possession or control. I shall not retain any written or other tangible material containing any information concerning or disclosing any Proprietary Information or Inventions.

(b) If my employment with the Company is terminated for any reason, I will protect the value of the Proprietary Information and Inventions and will prevent their misappropriation or disclosure. I will not disclose or use any Proprietary Information or Inventions for my benefit or the benefit of any third party, or to the detriment of the Company or its customers.

(c) I recognize that the unauthorized taking of any of the Company's trade secrets is a crime under California Penal Code section 499c, punishable by imprisonment for a time not exceeding one year, by a fine not exceeding \$5000, or both. I further recognize that such unauthorized taking of the Company's trade secrets could also result in civil liability under the California Uniform Trade Secrets Act (Civil Code sections 3426-3426.11), and that willful misappropriation may result in an award against me for triple the amount of the Company's damages and the Company's attorney fees in collecting such damages.

21. Entire Agreement. This Agreement represents my entire understanding with the Company with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral. This Agreement may be amended or modified only with the written consent of both me and the Company. No oral waiver, amendment or modification shall be effective under any circumstances whatsoever.

I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions

Company

myCIO.com

By

Title

Dated

EMPLOYEE

DAN MELCHIONE

By 

Printed Name: Dan Melchione

Dated: 4/24/00

Exhibit A

PRIOR INVENTIONS

Exhibit B

LIMITED EXCLUSION NOTIFICATION

THIS IS TO NOTIFY you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company
- (2) Result from any work performed by you for the Company

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

I ACKNOWLEDGE RECEIPT of a copy of this notification

By



Dan Melchione

Date

5/24/2000

Witnessed by

(Printed Name of Representative)

Dated

EXHIBIT C

**ADDENDUM TO EMPLOYEE INVENTIONS AND
PROPRIETARY RIGHTS ASSIGNMENT AGREEMENT**
(For Directors, Vice Presidents, President)

This Addendum, dated to be effective as of _____, hereby modifies and supplements the Employee Inventions and Proprietary Rights Assignment Agreement (the "Employee Inventions Agreement") between Company and the individual Employee identified below.

In return for new or continued employment by the Company at the level of Director, Vice President, or President, the Company and the Employee hereby acknowledge and agree as follows:

1 **Definitions** As used in this definition, the following terms shall have the following meanings:

"Applicable Fee" shall mean fifty percent of the On Target Compensation of the Restricted Individual in the one year period ending on the date that the Restricted Individual last provides services to Company.

"Contract Employee" means a person who provides services to an entity as an independent contract either directly or through a contract with a temporary or other similar service and such person has worked more than twenty hours a week for a period of longer than two weeks on projects identified and directed by such entity. "Contract Employees" do not include persons providing consulting services to an entity pursuant to a consulting services agreement between Company and such entity.

"Employed" shall mean that the individual is a full- or part-time employee of Employee's new employer or is a Contract Employee of Employee's new employer.

"Employee's Work Organization" shall mean, with respect to any entity at which Employee is either a full- or part-time employee or Contract Employee, those persons reporting to Employee, any persons reporting to such persons, directly or through intermediate personnel and any other persons for whose work product and work results Employee is responsible or directs in whole or substantial part.

"On Target Compensation" shall mean the amount paid to such Restricted Individual for that person's services, including bonuses and commissions, and the amount of bonus and/or commission that such individual would have been paid in any final partial quarter had such person remained during the entire period and completed all designated objectives for the bonus in the case of a non-sales person or achieved his or her sales quota in the case of a sales person.

"Restricted Individual" shall mean any person who has worked at Company either as a full- or part-time employee or as a Contract Employee within six months prior to the initial date that the person is Employed in Employee's Work Organization.

2. **Use of Restricted Individuals**

In accordance with the Employee Inventions Agreement, the Employee agrees that during the term of its employment with the Company and for a period of one (1) year thereafter, Employee shall not solicit, encourage, or cause others to solicit or encourage any employees of the Company to terminate their employment with the Company. Employee hereby agrees that in the event that Employee breaches this provision, the Company will suffer damages, and that such damages would be very difficult to calculate, however, such damages would certainly encompass expenses in recruiting and training a replacement for the employee. Thus, if within one year of the termination of Employee's employment with Company for whatever reason or no reason, a Restricted Individual is Employed in Employee's Work Organization, Employee agrees to pay to Company the Applicable Fee with respect to each such Restricted Individual. The Applicable Fee shall be due and payable to Company within thirty days of the date the first payment is made to the Restricted Individual with respect to his or her Employment in Employee's Work Organization. The Applicable Fee is intended to compensate the parties for the actual damages suffered and is not intended to be punitive in nature.

3 Confirmation and Application

This Addendum shall be governed by and forms a part of the Employee Inventions Agreement between Company and Employee. The foregoing agreements are in addition to and do not supercede the terms of the Employee Inventions Agreement with respect to solicitation or hiring of the employees of Company.


The Company and Employee hereby ratify and confirm the Employee Invention Agreement.

IN WITNESS WHEREOF, Company and Employee have executed this Addendum to the Employee Inventions Agreement as of the day and year first above written.

myCIO.com

EMPLOYEE.

By _____
Name _____
Title _____

By 
Name Dan Melchione
Title Software Engineer